

1  
2  
3  
4  
5  
6  
7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 COLUMBIA RIVERKEEPER, et al.,

11 Plaintiffs,

12 v.

13 SCOTT PRUITT, et al.,

14 Defendants.  
15

Case No. C17-289 RSM

ORDER DENYING MOTION FOR  
EXTENSION OF TIME

16 This matter comes before the Court on the United States' Motion to Extend by 30 Days  
17 the First Compliance Date in the Court's Order. Dkt. #40. On October 17, 2018, the Court  
18 Ordered as follows "[t]he EPA has 30 days from the date of this Order to approve or disapprove  
19 the constructively submitted TMDL at issue in this case, and 30 days after a disapproval to issue  
20 a new TMDL." Dkt. #39. The United States now requests that the Court extend the first of the  
21 two deadlines by 30 days, until December 17, 2018. Dkt. #40 at 2. The reasons for this request  
22 include the usual explanation that additional time is needed to complete internal government  
23 processes to determine whether to pursue an appeal, and the unusual explanation that certain  
24 decision-makers have only recently joined the Department of Justice of EPA. *Id.* at 2–3. The  
25 Government also states that it needs additional time to figure out how to coordinate with the  
26 parties to the 2000 Memorandum of Agreement. *Id.*  
27  
28

1 In Response, Plaintiffs “oppose EPA’s attempt to delay the process from the outset.”  
2 Dkt. #42 at 1. Plaintiffs argue that the EPA “knew this situation could arise—or should have  
3 known this—all along, and EPA could have easily avoided the problems it now claims to face.”  
4 *Id.* at 2. Plaintiffs specify that the EPA could have asked for more than 30 days to review the  
5 TMDL in prior briefing, that the Court ordered precisely the timeline that the EPA asserted was  
6 appropriate if the Court found a constructive submission, and that the nearly yearlong wait for  
7 the parties to receive the Court’s ruling should have afforded the Government time to prepare  
8 for all of this. *Id.*

10 On Reply, the Government states it is not “plausible to require that DOJ brief senior  
11 officials and the Solicitor General’s Office (which must approve any appeal) on every pending  
12 district court case in the event that an adverse decision may be forthcoming.” Dkt. #43 at 2.

14 The Court possesses broad authority to modify a prior order. See Fed. R. Civ. P. 60(b).  
15 Courts also possess broad authority to consider the needs of an agency when fashioning an  
16 appropriate remedy, or when modifying a prior remedial order, in response to a  
17 nondiscretionary citizen suit claim in order to provide a longer period of time for agency action  
18 than set out in the relevant statute. *See, e.g., Natural Res. Def. Council, Inc. v. Train*, 510 F.2d  
19 692, 712-13 (D.C. Cir. 1974).

21 The Court agrees with Plaintiffs that the EPA should have prepared for the Court’s  
22 ruling and a possible appeal, and had ample time to do so. The Court further finds a history of  
23 delay by Defendants unique to the facts of this case, and will not permit further delay without  
24 reasons more substantial than those cited in the instant Motion. The Government has failed to  
25 meet their burden to justify modifying the Court’s prior Order.

1 Having reviewed the relevant briefing and the remainder of the record, the Court hereby  
2 finds and ORDERS that the United States' Motion to Extend by 30 Days the First Compliance  
3 Date in the Court's Order (Dkt. #40) is DENIED.

4 DATED this 8<sup>th</sup> day of November, 2018.

6 

7 RICARDO S. MARTINEZ  
8 CHIEF UNITED STATES DISTRICT JUDGE  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28